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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,801	03/26/2001	Michael J. Novak	MS1-787US	8360

22801 7590 06/24/2009  
LEE & HAYES, PLLC  
601 W. RIVERSIDE AVENUE  
SUITE 1400  
SPOKANE, WA 99201

EXAMINER
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SHIN, KYUNG H

ART UNIT	PAPER NUMBER
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2443

MAIL DATE	DELIVERY MODE
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06/24/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* MICHAEL J. NOVAK, GEOFFREY HARRIS and  
KIPLEY J. OLSON

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Application No. 09/817,801  
Technology Center 2100

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Mailed: June 24, 2009

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Before ERIC W. HAWTHORNE, *Supervisory Paralegal Specialist*  
HAWTHORNE, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 14, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the

application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

EXAMINER'S ANSWER

On October 22, 2007, Appellants filed an amended Appeal Brief. A review of the application reveals that the Examiner has failed to respond to Appellants' Brief. MPEP § 1207.2 (8th ed., Rev. 6, Sept. 2007) states that "the examiner should furnish the appellant with a written statement in answer to the appellant's brief within 2 months after the receipt of the brief by the examiner." Correction is required.

INFORMATION DISCLOSURE STATEMENT

Appellants filed two Information Disclosure Statements (IDS's) dated July 9, 2008 and February 06, 2009. There is no indication on the record that the Examiner has considered the above IDS's. MPEP § 609 requires the Examiner to consider any IDS filed by Applicant if timely submitted. A written communication notifying Appellant of the Examiner's consideration of the above IDS's is required.

CONCLUSION

Accordingly, it is  
ORDERED that the application is returned to the Examiner to:

- 1) enter an Answer in response to the Appeal Brief filed October 22, 2007,
- 2) consider the IDS filed July 9, 2008 and February 6, 2009, and notify Appellants in writing as to such consideration; and

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3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

EWB/cdc

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